

COMMITTEE ON ADMINISTRATION/INFORMATION SYSTEMS

June 5, 2007

**Aldermen O'Neil, Lopez, Smith,
Forest, DeVries**

6:15 PM

**Aldermanic Chambers
City Hall (3rd Floor)**

Chairman O'Neil called the meeting to order.

The Clerk called the roll.

Present: Alderman O'Neil, Lopez, Forest, DeVries.

Absent: Alderman Smith.

Messrs: Mr. Tom Arnold City Solicitor, Mr. Bill Sanders, Finance Officer,
Mary Tenn Esq., MCTV Board Chair.

Chairman O'Neil addressed item 3 of the agenda.

Consideration of agreement between MCTV and the City.

Chairman O'Neil stated I would turn it over to Attorney Arnold who has had numerous discussions with Attorney Tenn and Attorney Eggert, and I believe that they are pretty close to a final recommendation with the exception, Tom do you want to go over the whole thing or just want to go over the area of that you have presented a recommendation to.

Mr. Tom Arnold City Solicitor stated I think I will try to briefly go over some of the changes that were made to the copy of the agreement that was attached to the agenda. There were some semantic changes that I will not go over, that I thought clarified intent. Going through the agreement in paragraph number four, funding, the language in that particular paragraph and several of the sub-paragraphs was changed so that the amount of the payment that is made each year to MCTV is calculated by the prior calendar years receipts. That was done so that the Board can make an appropriation knowing what the appropriation will be. In addition because we based it on the prior calendar year, rather than make quarterly payments there will be one payment made to MCTV in the first week of July at each year, in other words at the beginning of the Fiscal Year. Those funds are to be maintained in a separate account that is restricted to use by MCTV. There is a further acknowledgement down the agreement where the School Department acknowledges that these funds are not part of its yearly line item appropriation,

and are not used to either reduce or augment that appropriation. To make it clear these funds are to be used for MCTV and there are not subject to being switched between line items, as schools would ordinarily be able to do. As you can see in paragraph five there was some changes to administration, basically there was what I would call kind of a semantic change that provides, City should have access to MCTV's records included the audited records done by the school auditor during normal business hours, that was changed from reasonable access to make it clear. Under paragraph seven, employees the original agreement said it is anticipated that the any future hires would also be School District employees. I put in the language that said, but not required, I did that so recalling the discussion in the past with some of the difficulties of putting school employees into an independent organization that there would be some flexibility. The Board so chose but as you note it is anticipated that future hires would also be School-District employees so in the absence of some direction contrary. I think there was also some language added under property and liability insurance changes, basically dealing with risk coverage we noted that risk and liability management would be done in accordance with the past practice. That past practice of course is that Mr. Natapolis ordinarily will purchase insurance on a charge back basis and if there is some claim we'll have our third party administrator manage that claim. I think that in a nutshell these are some of the changes although I could not necessarily say all the changes that brings us back to I think one area that we do not agree on. In the original agreement in paragraph two as, Alderman O'Neil points out, what was present was what I have labeled as A or B. That would have provide that such designation to MCTV as an education and government access provider shall not be revoked in the absent in the failure to provide educational and governmental access. Now if these misappropriations or misuse of funds provided by the City or by mutual agreement between the City and the District. I had deleted that language and put in the language that is labeled "A" that merely states that forgoing notwithstanding the City at it's own discretion, revoke MCTV designation as access provider for education and/or government access programming. My intent was to treat it in a similar manner to the way we treated MCTV, that language is almost, I'm sorry, to the way we treated MCAM, that language is almost identical to the MCAM language. My thought process on that was that as the Board realizes ordinarily if you are a City Department or sub-department the department has to come before this Board each and every year and get an appropriation. What your agreeing to in this agreement is that your agreeing to the appropriation you are going to make, for each of the eight years I should say seven years of this agreement. The agreement is for eight years but in the first year is governed by the appropriation that's already been made for the upcoming fiscal year. So each of those seven years you are agreeing a head of time to what the appropriation will be. And I thought that like MCAM that the quo pre quo for that is that the City in it's sole discretion can revoke the providers status, realizing that's not likely done. As I initially indicated I think that the Dean

Eggert and Mary Tenn representing MCTV disagreed with that and we agreed that is really a policy decision that needs to be made in the first instance by this committee and ultimately by the full Board. And I guess I would defer to any questions.

Chairman O'Neil stated before we go to any questions Bill Sanders you've had a chance, I don't know if you've had a chance to see the most recent document that was working out some of the between the three lawyers but, do you have any concerns with the document as you have read it to date.

Mr. Bill Sanders, Finance Officer stated no I've had an opportunity to work with Tom during course of today and provided him with comments which he's incorporated and as the finance officer I believe there are sufficient controls and language in here to address any financial matters.

Chairman O'Neil stated thank you, do we want to hear from Attorney Tenn before questions or do you.

Alderman DeVries stated I just want to ask and I was going to ask Attorney Tenn to come up and comment on this but, before we go there I just want perfect clarification of the statement from the City side. My read of the new bolded statement within number two is that there has to be failure to provide or malfeasant or misappropriation or misuse of funds in order for us to revoke, is that correct.

Mr. Arnold stated that's correct under the language proposed by MCTV, if you look just above that there is alternate language which is labeled "A" which is the language I had proposed. That's set up in the alternative you need to make a choice.

Alderman DeVries stated thank you.

Chairman O'Neil stated that is how Tom laid this out, was to give us, I spoke with Attorney Arnold this afternoon, gave him my opinion but he felt and I do support him it was a decision that needed to be made by the Board, we should bring both wordings to the Board.

Alderman DeVries stated and Tom would you clarify again Alderman twelve and I just had a brief side line discussion here. The bolded print is the language that MCTV would request.

Chairman O'Neil stated no "A" is Tom's recommendation based on the MCAM agreement. It says after channel sixteen and twenty two it say's "A" that was

Tom's recommendation based on the MCAM agreement, "B" was the suggested in the language from Attorney Tenn and MCTV.

Mr. Arnold stated as you can see that's labeled or "B". I apologize.

Chairman O'Neil stated "B" is per the suggestion of MCTV, "A" Tom used based on the similar language with MCAM. Follow up Alderman DeVries.

Alderman DeVries stated thank you very much, then to clarify under "B" why would setting the scenario or staging the scenario where the City might revoke become problematic to you Tom, since that is a narrower version of our ability to revoke.

Mr. Arnold stated it is a narrower version and that's why I didn't want to agree to it. I wanted the ability to revoke to be to the whole discretion of the City, as opposed to having the narrow language where certain requirements have to be met before the City can revoke.

Alderman DeVries stated are their specific circumstances that come to you mind though that would not be covered under the narrower language.

Mr. Arnold stated I suppose there are lot of circumstances that would come to mind. Any circumstances where there wasn't maleficent, misappropriations or misuse. I mean under the more restrictive language there has to be one of those three events has to take place, before you can revoke.

Chairman O'Neil stated when Tom and I had this discussion I think we respectfully disagreed with each other on it. I look at this different than the MCAM. MCAM is a nonprofit we don't have necessarily had any control over their board etc. If look at the opening paragraph of the disagreement this is an agreement between the City of Manchester and the Manchester School District. So I look at this a little different than the MCAM and that is why I personally am comfortable with the language proposed as proposed by MCTV. But we need to have this discussion.

Alderman DeVries stated thank you.

Alderman Lopez stated thank you Mr. Chairman. Tom in looking at this A and B lets say we will go along with "A". What happens to the employees we have no authority over them like we do at MCAM we I think the determination legally was made that we could get rid of, that is probably the wrong terminology, but we could have another somebody else run MCAM if we found out anything. But in this particular situation I just want to make sure in my own mind even if we did

we do not have the authority to get rid of the employees they come in under the School District, so I'm trying to fit that in there somehow. Could you elaborate.

Mr. Arnold stated I think similar to the MCAM agreement if you accept alternative "A" that you could revoke MCTV provider status. With the ultimate effect you would have to find another provider, if you want to continue to provide governmental and educational programming. With the School Department they are School Department employees and the School Department retains ultimate authority over it's own employees, however if you revoke the status and don't provide the funding because you revoke the status, the School Department could certainly keep the employees, but they will have to find the funding for those employees.

Alderman Lopez stated but again what if we took the funding and said we no longer want it on the City side for an example, and I don't know if they belong to the union or not, but they still have rights under School employees and the reason they were hired is to run MCTV versus a non-profit fiber one free organization. I'm trying to really grasp that. I'm having a hard time where by we would say we wouldn't give them the funding but we give funding or eliminate MCTV and government access rather and educational and we are not going to fund it. So I guess employees would be laid off by the School District because there is no money for them like that it was a couple years ago. And what happens if we started back up government channel with another organization would they have, wouldn't they have some rights. I'm making sense to you.

Mr. Arnold stated I guess you're making sense, the question is would they have rights. No I am not sure that they would.

Chairman O'Neil stated Tom would it be safe if for some reason with the language be as proposed and we decided we wanted to revoke our agreement with them. It's up to the School District they could remain School District employees and the five of them could work with the School District doing something else, correct.

Mr. Arnold stated yes that's what I tried to say.

Chairman O'Neil stated I guess my point we don't need to be involved in that. That is the School District's responsibility the employees, not our responsibility we have an agreement with the School District to provide a service.

Alderman Lopez stated my only point is, lets say if that would play out and maybe we need another attorney up here to give their perspective to before we go any farther, because we would probably talk all night on this.

Chairman O'Neil stated I think just for the record we need to make it clear that Attorney Tenn is not official legal council for MCTV she is the chair of the Board of Directors of MCTV and she happens to be a practicing attorney in the City of Manchester.

Attorney Tenn stated thank you Alderman, my name is Mary Tenn, I work at Tenn and Tenn law firm in Manchester and I do have the privilege of being the Chair of the MCTV advisory Board as appointed by the School Board this January. You see in the room with me tonight other members of the advisory board sitting in the front row, I won't go through everybody's name I know you have all seen them before. I wanted to address some of the issues in regard to the agreement to try to put it in contact. I think the first and most important thing to understand is what Alderman O'Neil pointed out, that this is an agreement between the City and the School District as contemplated before you tonight. It is not an agreement between the City and a private not for profit corporation. That being said if we focus just on the choice and paragraph two there are two choices. The first A which is Attorney Arnold's suggestion which basically translate into the City can revoke this agreement for any reason or no reason at all, that's it. 'B' which is not MCTV's proposed language but language that would be acceptable to MCTV as proposed by the School District, and Attorney Eggert has said that he feels that it's important or at least we should consider enumerating the instances in which termination or revocation would be appropriate so that there could be certainty in the planning. And what I might point out to this committee is the way this agreement percolated up was because MCTV came to you and said, we have a strategic plan we need stable funding, we need to be de-politicized, so that we can implement the goals set forth in the strategic plan. And it was Alderman Lopez who said there must be an agreement that clearly lays it out so that nobody will be surprised. And so if you are going to create an agreement that says that the City will do X and the School District will do Y, I still can't understand the rationale for City saying we'll do X and the School District will do Y but we might change our mind. That doesn't give you certainty in engaging and strategic planning in achieving the goals of education and government access. I have not heard articulated in any of the conversations why there is a compelling reason for the City to have an automatic kill switch. And I would point out that the options laid out in section "B" include revocation for the things that you as a city should be concerned about. Malfeasance, misuse of funds or the failure to deliver services, but in addition to that there is another provision in paragraph "B", the City and the School District can agree that this agreement will be terminated in the future. So it's not only if MCTV or the School District were to do something you didn't like but this Board could in the future agree with the School District that for whatever political reasons, whatever financial reasons are at work in the City that the agreement would be terminated. What it does do, if you go with language "B" is it

gives MCTV and the School District the ability to engage in the real strategic planning that I think this Committee has wanted us to do from the get go.

Chairman O'Neil stated questions of Attorney Tenn.

Alderman Lopez stated just one clarification thank you Mr. Chairman. Attorney Tenn you cited some different things here but if we went with "B" and there was misuse of funds where in the contract, who would, the School District or the City side would take action.

Attorney Tenn stated is suppose either could it. But the City under this agreement would have the right to revoke the designation of MCTV as the education and government access provider if there was a failure to provide educational and government access malfeasance, misappropriation or misuse of funds as provided by the city. That's the section and language in "B". I would also point out that there is a termination provision, what is proposed paragraph seventeen and the City has clear rights of termination at paragraph seventeen as well, it's seventeen a seventeen b, or seventeen c, and you would have the right to terminate the agreement if there was a breach of any provision specifically if there was malfeasance, misappropriation or misuse of funds by the City, provided by the City, and also the right to revoke the designation of MCTV as access provider, should any of those things happen. So I believe that the contract fairly protects the City and the City's interest and doesn't bind you unnecessarily to a restrictive agreement but at the same time electing the language laid forth in option "B" allows us to implement what I think was the original purpose of coming together with this agreement in the first place.

Mr. Arnold stated I just in response to you question Alderman. The franchising authority in the City of Manchester is the Board of Mayor and Aldermen. The Franchising authority designates the access provider so that in order to revoke that designation the Board of Mayor and Aldermen would have to act. The School Committee would not have the power to revoke that designation, as it doesn't have the power to make that designation.

Alderman DeVries stated thank you. To City Solicitor, if the franchise dollars were not to flow to the City for some reason, a change of policy within the Federal Government, would that mean that we are no longer responsible to fund MCTV, but where that's not a provision to revoke their agreement with us would still go on just without funding.

Mr. Arnold stated if you look at paragraph four "A", the second paragraph under the "A", two percent of the cable companies applicable gross receipt that is due

and paid to the City. So before we have a duty to pay MCTV we have to have received the funds from the cable-company.

Alderman DeVries stated if I could follow up, that is not quite my question, I understand we have a mechanism in place not to be obligated if our franchise from the current provider, Comcast, is terminated. My question is all I read in here is an inability for us not to forward a percentage of dollars that we no longer receive but we would have this agreement in place because the revocation does not include lack of funding.

Mr. Arnold stated I think you are correct.

Alderman DeVries stated is that a problem in any way. That's just occurring to me now, is that a problem for the City to have this agreement stand when their life, their funding mechanism has been cut. It's a problem for MCTV but is that a problem for City.

Mr. Arnold stated looking at, it might be a problem for the City because although we wouldn't have the duty to provide funding we wouldn't be able to alter the access provider in the absence, of the agreement with the School District and if there was a lack of funding the School District might well agree. But if the School District didn't agree in the absence of malfeasance, misuse or failure to provide programming. Now I would presume if we did not fund MCTV they probably would not provide programming and that would be a reason to terminate, to revoke their status as per access provider.

Alderman DeVries stated would you concur with that Attorney Tenn.

Attorney Tenn stated that is exactly what I was going to say Alderman DeVries, without funding we could not operate, so there would be a failure of programming and that would be a basis to revoke the designation. I think it goes to the larger question, ultimately what would we do and we would be back before this Board.

Alderman DeVries stated thank you, I'm ready for a vote.

Chairman O'Neil stated Mary would you make it clear the Advisory Board with item "B" is comfortable with the contract.

Attorney Tenn stated the Advisory Board has not read the contract line for line. I believe that the contract is consistent with the mandate that we have been operating under from the Advisory Board from the get go when we were established in January. Attorney Eggert, Tom Arnold and myself have worked out that, but this agreement came off the printer at five thirty, I don't believe there is

nothing inconsistent in this agreement with what the Advisory Board which is MCTV to do.

Chairman O'Neil stated and I know there are five of your colleagues from the Advisory Board here. They all seem very comfortable I don't see anyone shaking their heads no. That's correct Tony.

Attorney Tenn stated I just point out the Advisory Board is just that advisory, so there has been no vote. The Advisory Board can't bind MCTV. MCTV continues to be operated through the School District. So what I can say is that this agreement is consistent with the strategic plan that the School District provided the plan that the Advisory Board works under, consistent with all the Board discussions, and having been vetted through Attorney Eggert I believe consistent with what the School Board would wish for the agreement to be.

Alderman Forest move to accept the contract with provision B and subsequent changes. Alderman DeVries.duly seconded the motion.

Attorney Tenn stated Mr. Chairman may I ask one question. At paragraph twenty-one of the agreement Attorney Arnold did insert some language in bold, that language either is to remain in the agreement or be excluded from the agreement, as I understand it based on the pleasure of the Board. So for example, if you were to select option "A" the language at paragraph twenty-one in bold would remain. If you were going to select option "B" that language would be stricken. In my understanding of it just basically to make the provisions of the agreement consistent, no matter which way you vote. So, to the extent you would vote for "A" or "B" I think we just have to marry it up to what is happening in paragraph twenty-one.

Chairman O'Neil stated Tom do you concur.

Mr. Arnold stated she is correct I had made arrangements with the clerk to print off the proper version I was just going to remove it without.

Alderman Forest stated I change my motion to reflect these changes and eliminate the bold section. Alderman DeVries concurred and seconded this motion.

Chairman O'Neil stated Tom are you in agreement, if "B" is approved we do not need the bold language, in section twenty-one.

Mr. Arnold stated that is correct. What I will do is I will print out this contract with the language in "B" in paragraph two and remove the bold language in paragraph twenty-one.

Chairman O'Neil stated motion has been made and seconded. There being none opposed, the motion was carried. Now on my understanding based on a couple of things. I want to thank Attorney Arnold, Attorney Eggert, and Attorney Tenn for their efforts in a very short time to get this agreement worked out. And I know they gave up sacrificed some time to get this done, so I want to thank all three of them for their efforts. Secondly in talking to the City Clerk to bring it in tonight we're going to bring it in under new business because this meeting got scheduled fairly late so we can discuss talk to the Mayor either I or the Chairman of the Board can speak to the Mayor see if maybe he take it up a little early, so the folks here tonight don't have to sit through hours of various, we know they love City government but I don't know. That's really the Mayors call on where, currently in will be under new business on the full Board agenda we will speak to the Mayor see if we can get to move it up.

Chairman O'Neil stated we took the vote correct. Any other business to come before the committee.

Alderman DeVries stated Board on Advisor.

Chairman O'Neil stated oh the policy the resolution. I haven't seen one.

Alderman DeVries stated we might be able to schedule another meeting with them.

Chairman O'Neil stated I have to apologize. I just got lost in the craziness of today I think. Yes, we will, the problem is we probably won't be able to get it to the full Board until the next meeting unless the Mayor calls a special is July tenth. I will have to talk to the Mayor I honestly do not know what happened with that. I apologize to you folks.

On motion of Alderman Lopez duly seconded by Alderman Forest it was voted to adjourn.

A True Record. Attest.

Clerk of Committee